



Age 60

Aviation Rulemaking Committee

REPORT TO THE FEDERAL AVIATION ADMINISTRATION

November 29, 2006

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EXECUTIVE SUMMARY

The Federal Aviation Administration (FAA) established the Age 60 Aviation Rulemaking Committee (ARC) to make recommendations on whether the FAA should adopt the International Civil Aviation Organization (ICAO) age standard and what actions the FAA would have to take if it adopted the standard. To determine whether it would recommend adopting the ICAO standard, the ARC created two working groups: one to prepare a position paper on adopting the ICAO standard and one to prepare a position paper on not adopting the ICAO standard. Each working group presented its position to the ARC for discussion.

The Adopt ICAO Standard Working Group recommended the FAA immediately adopt the ICAO age standard and increase the upper age limit for pilots in the cockpit to 65 years of age, provided another pilot in the cockpit is under 60 years of age. In providing its recommendation, the working group found that—

- ICAO Amendment No. 167 provides a catalyst and a rationale for immediate change,
- ICAO conducted an international survey of flight safety data and found no evidence to support an upper age limit of 60 years of age for commercial pilots,
- Medical and aging experts agree there is no medical rationale for the Age 60 Rule,
- Experience that comes with age is a positive factor,
- The success of real world operations (foreign airlines around the world, U.S. corporate aviation operators, and U.S. operators flying under part 135 of Title 14, Code of Federal Regulations) attest to the safe operation of pilots of 60 years of age.
- Socioeconomic conditions favor a change to the Age 60 Rule,
- In the past, the FAA has granted waivers to certificate holders without compromising safety,
- A pilot shortfall is pending and will be exacerbated by the Age 60 Rule,
- Legislation is pending on Capitol Hill to increase the upper age limit to 65 years of age, and
- Labor politics and pilot surveys are not an appropriate way to determine public policy.

The Do Not Adopt ICAO Standard Working Group recommended the FAA not adopt the new ICAO standard because—

- ICAO did not conduct a safety risk analysis to evaluate the impact of the change in the standard on safety,
- The new ICAO age 65 standard arbitrarily replaces one age limit with another,

- There is no criterion-based process for determining pilot fitness to fly past 60 years of age,
- No mitigations have been offered that would provide for an equivalent level of safety if the ICAO standard were adopted over the existing Age 60 Rule,
- The new ICAO standard would reduce the current U.S. airline safety standard,
- The FAA will be in compliance with the new ICAO standard on November 23, 2006, without changing the existing regulations because the standard does not preclude the FAA (or any ICAO State) from setting a lower maximum age limit, and
- Before initiating a rulemaking that could change the Age 60 Rule, the FAA should conduct a safety risk assessment with the participation of airline, pilot, and aeromedical representatives.

The ARC requested that the FAA publish a notice requesting public comments on whether the FAA should adopt the ICAO standard to ensure it adequately addressed all the issues. The FAA received a total of 5,575 unique submissions to the docket as of November 28, 2006, representing 17,906 comments.

During its deliberations, the ARC working groups requested and received information from numerous sources for evaluation, including the Aerospace Medical Association.

While reviewing both positions papers, the ARC also evaluated the impact on the industry and the FAA of adopting the ICAO standard and heard from and considered information from both working groups. The ARC members found that some air carriers do not have concerns over implementation issues, while other air carriers have significant concerns. Issues raised that would need to be considered if a new age standard were adopted include the following:

- The timeframe required for FAA rulemaking action;
- Economic and operational issues such as the impact on retirement plans; salary and benefits; training costs; planning, scheduling, and bidding software; pilot staffing; air carriers with second officers; and augmented flight deck crews; and
- Reinstatement rights for pilots.

The ARC members had divergent views on the following issues:

- Safety implications and whether a safety risk assessment needs to be conducted; and
- Whether age discrimination currently exists with respect to the Age 60 Rule.

The age 60 issue remains contentious for the commercial aviation industry. The ARC members, while collaborating to identify many issues, were unable to reach a consensus on whether or not the FAA should adopt the ICAO standard.

However, the ARC is able to provide the Administrator with the following recommendation:

Any change to the Age 60 Rule should be prospective. If preventing reinstatement is outside the scope of the Administrator's authority, Federal legislation may be required to protect companies and unions from lawsuits that may arise challenging the prospective nature of the change, such as reinstatement of employment, seniority, and/or crew position.

ABOUT THE AGE 60 AVIATION RULEMAKING COMMITTEE

The Federal Aviation Administration (FAA) Administrator established the Age 60 Aviation Rulemaking Committee (ARC) on September 27, 2006, to (1) provide a forum for the U.S. aviation community to discuss the new International Civil Aviation Organization (ICAO) standard, (2) make recommendations as to whether the United States should adopt that standard, and (3) determine what actions would be necessary if the FAA were to change the regulation to meet the new ICAO standard.

The ARC consists of 17 members, selected by the FAA, representing pilot unions, airlines, the aeromedical community, and the FAA. Membership on the committee is limited to promote discussions. However, the committee members may invite additional participants as subject matter experts to support specialized working groups. The ARC members are listed in Appendix 1 to this report.

The ARC will remain in existence until March 27, 2007, unless sooner terminated or extended by the Administrator.

The initial tasking for the ARC is to make recommendations (1) as to whether the FAA should adopt the ICAO standard, and (2) about what actions would be necessary if the FAA were to change the regulation to meet the new ICAO standard.

The first tasking was to be completed within 60 days of the effective date of the ARC.

BACKGROUND

HISTORY OF THE AGE 60 RULE

In the late 1950s, some major airlines began to unilaterally institute forced pilot retirement at age 60. In 1958 and 1959, pilots filed grievances against their airlines on the forced retirement age, and in each case, a neutral arbitrator decided in favor of the union over the airline. However, American Airlines, Inc. (American), founder and chief executive officer C.R. Smith refused to reinstate three pilots who brought the grievance against American, which provoked a strike against American and a 21-day walkout. Mr. Smith wrote Federal Aviation Agency Administrator Elwood R. Quesada urging the Federal Aviation Agency to declare age 60 as a federally mandated retirement age for pilots.

On June 27, 1959, the Federal Aviation Agency issued a notice of proposed rulemaking titled “Maximum Age Limitations for Pilots,” in which it proposed that no individual who has reached his 60th birthday may be used or serve as a pilot on any aircraft engaged in air carrier operations. This proposal became effective March 15, 1960, in Civil Air Regulation Amendment No. 40–22. In issuing the Age 60 Rule (currently § 121.383(c) of Title 14, Code of Federal Regulations (14 CFR)), the agency found that establishment of a maximum age of 60 for pilots used by air carriers was necessary for safety in air commerce and was in the public interest. The agency also noted that a number of pilots were flying past the age of 60 and the number was expected to increase in the coming years.

Although there had not been any age-related incidents or accidents, the Federal Aviation Agency expressed concern that there could be a safety hazard presented by using these older pilots. In support of its position, the agency cited progressive deterioration of certain important physiological and psychological functions with age. The agency also stated that significant medical deficiencies attributable to this degenerative process occur at an increasing rate as age increases and that sudden incapacity due to such medical defects becomes significantly more frequent in any group reaching age 60.

Other concerns expressed by the Federal Aviation Agency included the loss of the ability to perform highly skilled tasks rapidly; resist fatigue; maintain physical stamina; perform effectively in a complex and stressful environment; apply experience, judgment, and reasoning rapidly in new, changing, and emergency situations; and learn new techniques, skills, and procedures.

During this process, the agency accepted comments but did not hold hearings or present medical data for public or peer review.

The Federal Aviation Agency, however, applied limited medical information relating to the general population. Numerous medical experts noted that the airline pilot population is a select group. The use of general population medical information, therefore, has been contested as inappropriate. The Federal Aviation Agency attorneys objected to placing the new retirement age in medical standards and it is regulated as an operational rule.

Since its inception, there have been numerous attempts to change the Age 60 Rule through the exemption process and judicial challenges. All attempts have been unsuccessful. The FAA has consistently held that the Age 60 Rule is an operational and safety rule and that no one has offered an alternative that provides an equivalent level of safety. The courts have consistently upheld the FAA's authority to implement and enforce the Age 60 Rule and the legal basis for its establishment. The courts have not ruled on the merits of this issue and have not ruled on age 60 as an appropriate age for mandatory retirement of commercial airline pilots under 14 CFR parts 121 and 135.

ICAO ANNEX 1 HIGHLIGHTS

ICAO Standards and Recommended Practices have been developed over the years and are published as annexes to the Convention on International Civil Aviation ("Chicago Convention"). The standards are not mandatory for an ICAO member State, but any State departing from a standard must inform ICAO of this intent so that the other contracting States are notified. However, no contracting State is required to provide any notice of its intent regarding recommended practices. Annex 1—Personnel Licensing, chapter 2, contains the general rules concerning age limits for pilots. Before November 23, 2006, the ICAO standard prohibited individuals from serving as pilot-in-command in air transport operations if they had attained their 60th birthday. A number of ICAO member States filed differences with this age limit, either raising or eliminating it.

In 1994, the ICAO Air Navigation Commission (Commission) tasked the Aviation Medicine Section to review the upper age limit for pilots. The Commission determined that even though the upper age limit is part of the general licensing requirements and not the medical provisions, the medical aspects of the upper age limit were very important. The Aviation Medicine Section contacted the chief medical officers of 12 selected ICAO member States to ask their opinion on the relevance or necessity of an upper age limit. The majority of chief medical officers considered an age limit, even an arbitrary one, necessary. The Aviation Medicine Section then sent out an official ICAO letter to all contracting States requesting information on the upper age limits in force. This letter elicited a high response and showed that many contracting States already had adopted an upper age limit above 60 years of age and that some States had no upper age limit.

The Aviation Medicine Section presented the State responses to the letter to the Commission in 1995. At the same time, the Joint Aviation Authorities (JAA) were about to introduce a new upper age limit of 65 years of age for European pilots. Because of the JAA's actions, the Commission decided to postpone its own actions on the upper age limit so it could evaluate the European experience. The new JAA regulation adopting age 65 went into effect July 1, 1999.

On December 31, 2003, ICAO circulated another letter to its 189 contracting States and select international organizations that included a questionnaire about older pilots as part of its deliberations on whether to amend the upper age limit for airline pilots with the intent to harmonize the ICAO provisions with the regulations in force in many States.

The questionnaire was aimed at the States that allowed pilots to fly beyond 60 years of age and solicited demographic and operational information. One hundred eighteen States responded to the survey. A majority of respondent States (83 percent) indicated an international age limit above 60 years of age would be appropriate for airline pilots. Of those, 72 States indicated 65 years of age would be appropriate in multicrew operations. A few States, including some major contracting States, wanted no age limit at all. A minority of respondent States (16 percent) indicated a preference to maintain the current ICAO upper age limit, citing the possible safety risks and a lack of convincing data that flying after age 60 is safe.

Many countries around the world, including JAA member States, had experience with pilots flying beyond 60 years of age. The data included 15,000 pilot-years of experience and indicated no safety risk and only minor health problems with pilots between 60 and 64 years of age. The Aviation Medicine Section also reviewed existing international literature and medical studies on older pilots and flight safety. The results of its surveys and literature review were presented to the Commission. The Flightcrew Licensing and Training Panel (FCLTP) were meeting at the same time. One member of the FCLTP suggested that the issue of the upper age limit be added to its agenda. The chief of the Aviation Medicine Section and the chief of the Personal Licensing and Training Section advised against adding the issue to the agenda at a meeting of the Commission because—

- The FCLTP had a full agenda and would not be able to take on an additional major issue;
- The FCLTP did not have the expertise relevant to the medical aspects, including physical and mental, of the task;
- The Commission considered the medical aspects of the age limit to be of primary concern and designated the task to be conducted by the Aviation Medicine Section; and
- The Aviation Medicine Section had worked on the task for several years and was close to completing it.

Despite this recommendation, the FCLTP accepted the task on its agenda but limited its discussion to the operational aspects of the standard. The FCLTP reviewed the following three questions:

1. Are the existing provisions still valid from an operational point of view?
2. If there is a need to amend the existing provisions, should new provisions be based on a specific age and why?

3. Are any additional operational provisions required in the ICAO Standards and Recommended Practices to support an increase or deletion of the upper age limit?

The FCLTP working group concluded that it did not have the expertise or information to make a formal safety assessment of the issue and accepted the recommendations of the ICAO Aviation Medicine Section. The FCLTP restricted itself to stating that it could find no indication of reduced flight safety in the States where a higher upper age limit had been implemented, agreeing that a transition to a criterion-based process for determining pilot fitness would require extensive additional research and take a number of years, and agreeing that many States allow pilots to fly past 60 years of age with no evidence of reduced levels of safety. The FCLTP concluded that until there is an alternative safety basis for determining pilot fitness, an age discriminant would be the simplest means of achieving a harmonized ICAO standard.

The FCLTP proposed that the current ICAO age standard be revised from 60 to 65 years of age in multicrew operations, provided the second pilot is below 60 years of age. This caveat, as noted in the ICAO report, was a compromise for the purposes of unity and not a reflection of the medical necessity of having one pilot under 60 years of age. It also proposed that all pilots over 60 years of age undergo a medical assessment every 6 months. Finally, the working group proposed that the upper age limit be revised to 65 years of age only until a satisfactory alternative is developed in the long term for determining a pilot's continued fitness. The working group recognized that its recommendations simply resulted in the replacement of one age limit with another.

As a result, on November 23, 2006, ICAO revised the upper age limit in the Standards and Recommended Practices to Annex 1—Personnel Licensing as follows:

2.1.10.1: A Contracting State, having issued pilot licenses, shall not permit the holders thereof to act as pilot-in-command of an aircraft engaged in international commercial air transport operations if the license holders have attained their 60th birthday or, in the case of operations with more than one pilot, where the other pilot is younger than 60 years of age, their 65th birthday.

2.1.10.2: **Recommendation.** A Contracting State, having issued pilot licenses, should not permit the holders thereof to act as co-pilot of an aircraft engaged in international commercial air transport operations if the license holders have attained their 65th birthday.

Note. Attention is drawn to 1.2.5.2.3 on the validity period of Medical Assessment for pilots over the age of 60 who are engaged in commercial air transport operations.

1.2.5.2.3: When the holders of airline transport pilot licenses-aeroplane, helicopter, and powered-lift, commercial pilot licenses-aeroplane, airship, helicopter and powered-lift, and multi-crew pilot licenses-aeroplane, who

are engaged in commercial air transport operations, have passed their 60th birthday, the period of validity specified in 1.2.5.2 shall be reduced to six months.

No ICAO member State has notified ICAO that it will impose a different age limit on foreign pilots flying foreign aircraft into their national airspace. A few States will retain the 60 years of age standard.

RECENT LEGISLATIVE HISTORY (H.R. 65 AND S. 65) TO AMEND THE AGE RESTRICTIONS FOR COMMERCIAL AIRLINE PILOTS

In January 2005, Representative Jim Gibbons (R–NV) and Senator James Inhofe (R–OK) introduced H.R. 65 and S. 65, identical bills that tied pilot retirement age to the age at which beneficiaries receive their full Social Security Administration benefits.

On November 18, 2005, the Senate Commerce, Science, and Transportation Committee approved by voice vote a substitute amendment to S. 65, requiring the FAA to implement the new ICAO standard within 30 days of ICAO’s adoption of that standard. The amendment also includes a provision that any change to the Age 60 Rule would not provide the basis for a claim of seniority made by any pilot seeking reemployment following the pilot’s previous termination or cessation of employment as required by § 121.323(c). The amendment includes a study of the safety record of older pilots and a report back to Congress.

On July 18, 2006, the Senate Transportation Appropriations Subcommittee adopted the 2007 Transportation, Treasury, Housing, and Urban Development (TTHUD) appropriations bill, which included a provision similar to the amended S. 65 as part of Chairman’s Mark. The full Senate Appropriations Committee approved the TTHUD bill on July 20, 2006.

The House has not moved on H.R. 65, and the House version of the TTHUD bill passed June 14, 2006, does not contain any provision related to amending the age restriction for pilots.

INDUSTRY VIEWS

GENERAL

This section provides information on industry views and opinions on a number of issues surrounding the Age 60 Rule. To determine whether the ARC should recommend adopting or not adopting the ICAO standard, it prepared a position paper on each side. These papers, which present the ARC members' arguments for or against adopting the ICAO standard, are summarized below and can be found in their entirety in Appendixes 2 and 3 to this report. Each working group also provides additional information in the Appendixes not referenced directly in the report, identified as being provided by the appropriate working group.

Where appropriate, ARC members have endorsed a position. Several ARC members elected to remain neutral or not take a position.

WORKING GROUP SUMMARY: ADOPT THE ICAO STANDARD

Following is a summary of the Adopt the ICAO Standard Working Group's position paper, which is provided in its entirety as Appendix 2.

Currently, the Age 60 Rule (or the Rule) prohibits air carriers from using the services of any person as a pilot on an airplane engaged in part 121 operations if that person has reached his or her 60th birthday. The Age 60 Rule is an arbitrary policy whose time has passed. As discussed below, the FAA should immediately increase the upper age limit for commercial pilots to 65 years of age.

Background

The Age 60 Rule was adopted in 1959 to solve a contractual labor dispute. The medical data did not support revising the FAA's medical standards to require pilots to stop flying at 60 years of age so the Rule was created as an operational standard. However, unsubstantiated medical claims have still been made to justify keeping the Rule in place, despite the distinct lack of data to support such assertions. Medical and aging experts agreed then as they do now: there is no medical justification for the Age 60 Rule. It is time for a change.

This arbitrary Rule could not be enacted today. It did not go through a thorough vetting process, there were no public hearings, and there is no evidence that anyone in Congress or the media scrutinized its implementation. Today, U.S. pilots are flying safer, more user-friendly aircraft than they did in 1959. Training is better, and pilot performance is higher. Moreover, life expectancy is more than 10 years longer in 2006 than it was in 1959, and pilots as a group are among the healthiest Americans. If there was ever a rationale for this policy, it certainly is not justified in 2006. Today, this policy amounts to simple age discrimination, as most pilots and the Air Line Pilots Association (ALPA) believed it was in 1959.

Finally, we agree with medical and flight safety experts who have studied the Age 60 Rule and have conclusively found that experience is the best indicator of how a pilot will perform when there is a crisis in the cockpit. Therefore, the ICAO standard improves safety by keeping the most experienced pilots in the air for up to an additional 5 years.

The FAA Should Immediately Adopt the ICAO Age 65 Standard

The Adopt the ICAO Standard Working Group recommends that the FAA revise its current Age 60 Rule by adopting ICAO Amendment No. 167 to increase the upper age limit for pilots to 65 years of age, provided another pilot in the cockpit is under 60 years of age.

For domestic operations, the FAA should consider waiving or amending the over-under provision and allow both pilots to be over 60 years of age. Eliminating the over-under provision would streamline many implementation issues and benefit the industry.

The working group further recommends that the FAA initiate the regulatory process necessary to implement these changes immediately upon receipt of the ARC Report.

Key Factors Considered in Adopting the Pro-Change Position

1. ICAO Amendment 167 provides a catalyst and a rationale for immediate change.

- Beginning November 23, 2006, foreign pilots over 60 years of age will be allowed to fly in U.S. airspace; unless the FAA changes the Age 60 Rule, U.S. pilots will still be forced to retire at 60 years of age.
- If foreign pilots over 60 years of age are deemed safe to fly in U.S. airspace, then there is clearly no rational explanation for applying a different standard to U.S. pilots.
- One level of safety, two sets of rules: This is a double standard that cannot be tolerated.

2. ICAO conducted an international survey of flight safety data and found no evidence to support an upper age limit of 60 years of age for commercial pilots.

- ICAO recognizes that pilot performance, longevity, and health have improved dramatically, along with the aircraft, systems and the aviation operational environment.
- ICAO surveyed existing flight safety data which was conducted both in the United States and abroad and came to the conclusion that a “higher upper age limit is compatible with safe flying.” They based their findings on “[d]ata compiled from 64 States, accumulated experience with well over 3,000 older pilots and totaling at least 15,000 pilot-years.”
- The risk analysis conducted by ICAO concluded that the risk of two older pilots becoming medically incapacitated at the same time is “thus one per trillion hours, a risk so low that it can safely be disregarded.”

- Only 18 members States indicate they will retain age 60 as their national age limit. None indicate they will refuse to allow or support the new ICAO standard of 65 years of age.

3. Medical and aging experts agree that there is no medical rationale for the Age 60 Rule.

- The Aerospace Medical Association (AsMA) clearly states the unified position of the aerospace medical community:

“On review of the existing evidence, the Aerospace Medical Association concludes there is insufficient medical evidence to support restriction of pilot certification based on age alone.”

- The U.S. Equal Employment Opportunity Commission (EEOC) “finds the Rule to be discriminatory and does not believe that a chronological age limitation is a Bona Fide Occupational Qualifier (BFOQ) for any pilot.”
- The EEOC has virtually eliminated age limits for pilots in all facets of U.S. aviation with the exception of part 121 commercial airline pilots. The EEOC contends that “the way to determine if someone should continue to do the job is to use our modern-day avenues: physical and mental fitness, not a calendar.”
- In a November 15, 2006, letter to the FAA Administrator, the EEOC said it “strongly encourages the FAA to lift the Age 60 Rule.” It also stated “[w]e support raising the age limit for part 121 pilots to age 65” and that it opposes “the adoption of the requirement that pilots over age 60 be paired with pilots under age 60.” See Appendix 4 to this report for a copy of the EEOC comment.
- The National Institute on Aging (NIA) supports a change in the Age 60 rule. In a study conducted by Johns Hopkins University, NIA reported that chronologic age by itself has little bearing on safety performance.
- AARP, the Seniors Coalition, EEOC, and other aging experts find the Rule to be a clear case of age discrimination.

4. Safety

- The following survey of recent, relevant flight safety studies was conducted on the issue of pilot aging as a safety factor, as well as other comments:
 - 1991: *Lubner, et.al.* In general aviation, older pilots were at less risk than younger pilots for both accidents and violations.
 - 1994: *Baker and Li.* Analysis of flight time, age, and crash rate showed a decrease in crash rate with age, when age correlated with greater experience.
 - 1994: *FAA Hilton Study.* The accident rates of older pilots with a first class or second class airman medical certificate declined from age 40 through the early 60s, but showed a slight increase from age 65 to 69.

- 1997: *McFadden*. Accident rates of U.S. airline pilots declined as pilot experience (total flight hours and recent flight time) and age increased.
 - 1999: *Rebok, et. al.* There appear to be no significant age differences in the pilot performance factors contributing to [general aviation] crashes.
 - 2001: *Baker, et.al.* The percent of crashes involving poor decisions or pilot error declined with age.
 - 2002: *Li, et.al.* In a longitudinal study of pilots aged 45 and older, neither crash circumstances nor the prevalence and patterns of pilot errors changed significantly with age.
 - 2003: *Li, et.al.* These researchers followed a cohort of pilots for 11 years (pilots were between the ages of 45 and 54 at the start of the study). They found that there was no significant age-related increase in crash risk, but that the risk of a crash decreased by about half among pilots with a total flight time of more than 5,000 hours.
- Additional studies and their conclusions are referenced in the supporting documentation at the end of this paper. As referenced above, safety is not a function of age. In fact, the experience that comes with age is a positive factor.
 - The success of real world operations (at airlines around the world, U.S. corporate aviation operators, and part 135 operators) all attest to the safe operations of pilots over the age of 60. The Adopt ICAO Standard Working Group believes the safety concerns of those opposing a rule change are overstated.

5. Socio-economic conditions favor a change in the Rule.

- A change in the Rule would help solve economic and public policy challenges that pilots and the traveling public face because of dramatic changes in the industry post 9/11.
- A change in the Rule would ease the pension burden without requiring any additional expenditure from the Federal Government or related agencies.
- A change in the Rule would save the Pension Benefit Guaranty Corporation (PBGC) (that is, the Federal Government) almost \$1 billion per year according to a recent study by airline economist Darryl Jenkins.¹
- A change in the Rule is not expected to have any appreciable effect on air carrier liability insurance rates.²

¹ A Cost Benefit Analysis of S. 65 and Reforming the Age 60 Rule on the Federal Government, by Darryl Jenkins, dated July 24, 2006, provided to members of the U.S. Congress and other interested parties. See Appendix 5 to this report for a copy of this report.

² Based on the results of an informal ATA survey of insurance providers.

6. In the past, FAA has granted waivers to certificate holders without compromising safety.

- Icelandair, Cargolux, and Corse Air were all granted waivers in the early 1990s. There were no accidents or incidents related to age.
- In the mid 1990s, part 135 pilots were required to shift to part 121 standards. Pilots over 60 years of age were allowed to fly for an additional 5 years from 1994 to 1999. Again, there were no accidents or incidents related to age.
- Recently, air traffic controllers eligible for performance-based waivers to 56 years of age have been given waivers up to and including 61 years of age.
- Finally, former Professional Air Traffic Controllers Organization controllers are being rehired with no age restrictions if they were originally hired before 1972.
- Waivers should be issued to individual pilots as a transitional step, pending a final change to a new U.S. age standard.

7. A Pilot shortfall is pending and will be exacerbated by the Age 60 Rule.

- There is a pilot shortage forecasted to be as great as 30,000 by 2017.
- In next 5 years, 9,047 airline pilots will be forced to retire based on the Age 60 Rule.
- These pilots are primarily veterans who have suffered in the post-deregulation industry.

8. Legislation is pending on Capitol Hill to increase the upper age limit to 65 years of age.

- A provision similar to S.65, which would require the FAA to adopt ICAO Amendment No. 167, is attached to the fiscal year 2007 Senate Transportation Appropriations Bill.
- The legislation has strong support from the Chairman of the Transportation, Treasury, the Judiciary, Housing and Urban Development, and Related Agencies Subcommittee, who authorizes and appropriates the FAA's budget, along with the chairs of committees dealing with pensions, energy, and numerous other critical aviation issues.
- If the FAA does not amend the Rule administratively, the congressional push for change has significant momentum and will continue.

9. Labor politics and pilots surveys are not an appropriate way to determine public policy.

- Without safety, medical, or economic justification, the Age 60 Rule has become little more than a jobs program for younger pilots.
- This is simply not a good rationale for keeping a rule in place that has not been amended or modified in nearly a half a century.

Conclusion

The Adopt ICAO Standard Working Group agrees with the findings of ICAO, the AsMA, and other entities that an age-based pilot retirement rule has no medical justification. If there is no medical justification, then there can be no safety rationale for keeping the Age 60 Rule in place.

Moreover, the FAA cannot possibly exclude U.S. pilots from an operational standard change that will allow foreign pilots to work and fly in the United States past the 60 years of age and claim it is based on a safety guideline. A decision to do so treats U.S. pilots over 60 years of age as less safe than their foreign counterparts. The working group feels certain that there is no data to support such a claim, yet that is the only conclusion one can logically reach from such a decision.

Long ago, when the rule was first being debated, ALPA opposed the change to age 60. In its flagship publication (The Airline Pilot, October 1959) it stated that “[t]he proposed Regulations (the age 60 rule) constitute arbitrary action unrelated to safety purposes and based on incomplete and inaccurate information. No incident or accident in commercial airline transportation has ever been attributed to the chronological age of an airline pilot even though pilots 60 years of age and over have been flying on the commercial airlines for many years.” Forty-seven years later that statement still rings true.

It is the position of the Adopt the ICAO Standard Working Group that the FAA should immediately adopt ICAO Amendment No. 167 to increase the upper age limit for pilots to 65 years of age, provided another pilot in the cockpit is under 60 years of age. We also recommend the following:

- The over-under provision, of one pilot being under 60 years of age if the other is over 60 years of age, be dropped in favor of a uniform move to 65 years of age for both pilots.
- The FAA, if it finds international operators need more time before an age change is adopted, should move to immediately amend the pilot retirement to 65 years of age for U.S. domestic operations only.

The Adopt the ICAO Standard Working Group position is endorsed by the following ARC members:

- Joseph “Ike” Eichelkraut, Southwest Airlines Pilots’ Association
- Paul Emens, Airline Pilots Against Age Discrimination
- Leslie Carr, Southwest Airlines Co.
- Pete Russo, JetBlue Airways Corporation

WORKING GROUP SUMMARY: DO NOT ADOPT THE ICAO STANDARD

Following is a summary of the Do Not Adopt the ICAO Standard Working Group's position paper, which is provided in its entirety as Appendix 3.

Background

In 1994, the ICAO Air Navigation Commission tasked the Aviation Medicine Section to review the upper age limit for pilots. Of the chief medical officers contacted from 12 selected ICAO member States, one chief medical officer responded that an age limit, even an arbitrary one, was necessary. One chief medical officer responded that a system without an age limit would be an "administrative nightmare." Others noted that a system based on the results of a medical exam would increase the hostility of pilots toward their medical examiners and diminish the quality and reliability of the medical assessment.

Before November 23, 2006, the ICAO standard prohibited individuals from serving as pilot-in-command in air transport operations if they had attained their 60th birthday. In December 2003, ICAO distributed a seven question "Questionnaire About Older Pilots." ICAO conducted this survey as part of its deliberations on whether to amend the upper age limit for airline pilots with the intention of harmonizing the ICAO provisions with the regulations in force for many States.

Only 112 of 185 States responded to the questionnaire. A majority of the respondents (83 percent) indicated that an international age limit above 60 years of age would be appropriate for airline pilots. Of those, 72 States indicated that an upper age limit of 65 years of age would be appropriate for multicrew operations and 6 States preferred no upper age limit. A minority of the respondents (16 percent) indicated a preference to maintain the current ICAO upper age limit of 60 years of age, citing possible safety risks and a lack of convincing data that flying after 60 years of age is safe. It was unclear how the nonresponders to the survey would react to any change in the ICAO age 60 standard.

The Air Navigation Commission of ICAO considered the results of this limited questionnaire at a meeting of its FCLTP in early 2005. A working group of the FCLTP considered the age issue and arrived at a number of conclusions. Among them was that the working group did not have the expertise or the information to make a formal safety assessment of the issue, as requested. It also agreed that a transition to a criterion-based process for determining pilot fitness to fly beyond the age of 60 would require extensive additional research that would take a number of years. Developing a non-age-related safety basis for continued pilot medical certification would place a significant economic burden on governments and industry in the various States.

As a result of the survey and after deliberations of the Air Navigation Commission, ICAO will implement Amendment No. 167. This amendment will be applicable November 23, 2006, and will allow airline pilots in multicrew operations to continue flying until 65 years of age, provided that no other pilot has attained 60 years of age and that all pilots over 60 years of age undergo a medical assessment every 6 months. The

standard does not require States to allow any pilots to fly past 60 years of age; it merely permits States to do so.

Currently there is legislation pending in Congress. It is important to note that previous attempts to change the Age 60 Rule were rejected by the full Senate in October 2001, and June 2003. The House of Representatives has never had a floor vote on the issue. The House committee of jurisdiction on the current bill did not hold a hearing, mark-up, or vote on the merits of H.R. 65. The failure of the House and Senate to pass stand-alone bills with floor votes indicates there is not widespread support in Congress to change the Age 60 Rule.

The FAA Should Not Adopt the New ICAO Age Standard

The Do Not Adopt the ICAO Standard Working Group recommends that the FAA should not adopt the new ICAO standard's maximum pilot age of 65 years of age. The standard does not adequately address safety issues involved in extending pilot operating age and does not provide an equivalent level of safety to the FAA's current regulatory standards. No compelling safety argument in favor of increasing the maximum age limit has been advanced by its proponents.

It is the working group's view that the new ICAO standard was adopted through an inadequate process. There was no structured, detailed opportunity to solicit information regarding experiences or problems associated with pilots flying beyond 60 years of age. There was no safety risk analysis of the effect of a change to the standards, only a cursory review of studies done by other organizations was conducted. The FCLTP was unable to perform such an analysis because of a lack of both appropriate information and expertise. This new standard bears no evidence of rigorous examination or appropriateness. It amounts to rewarding those States that are not in compliance with the current ICAO age standard by adopting a lesser rule those States are willing to meet. This is truly a worst-case example of regulating to the lowest common denominator. The FCLTP recognized that the new standard simply resulted in the replacement of one age limit with another age limit.

Since the Age 60 Rule was enacted in 1960, it has proven to provide a safety margin for aging pilots in air carrier operations. ALPA initially opposed the adoption of this regulation when it was established in 1960 and continued to work to change the regulation until 1980, when ALPA reversed its position and began supporting the regulation. This reversal was due in part to the fact that the FAA defended the regulation as a safety-based rule. Being unable to prove the rule unsafe, ALPA changed its position and for the past 26 years has supported this regulation. In today's world, a safety risk assessment must be conducted as part of any regulatory proposal to demonstrate an equivalent or better level of safety. This should include a thorough safety study of operations involving pilots who fly past 60 years of age. See Appendix 6 for a list of foreign airlines flying with pilots beyond 60 years of age. There has not been such an equivalence demonstrated, and ICAO did not take the time or expend the resources to do this.

A regulatory change also would require an economic impact evaluation to determine the economic cost of a regulatory change. This would necessitate a study of the impact not only on the operators but the pilot community as well. A recent study by airline economist Darryl Jenkins concluded that a change to the Age 60 Rule would save the PBGC (that is, the Federal Government) almost \$1 billion annually. The Do Not Adopt the ICAO Standard Working Group refutes that assertion via the report in Appendix 7, “Fatal Flaws Invalidate Conclusions by Jenkins’ Report on the Age 60 rule,” authored by Drew Keith, Allied Pilots Association. The Do Not Adopt the ICAO Standard Working Group also provides in Appendix 8, a chart that handily refutes the notion that extending the retirement age will address a supposed, future pilot shortage. A pilot shortage was also predicted in the 1990s, but the number of furloughed pilots actually increased during that time of airline growth.

The current U.S. Federal Aviation Regulations will be in compliance with the ICAO standard effective November 23, 2006. ICAO’s new standard does not establish a minimum age limit for pilots, only a maximum. The ICAO standard does not require States to permit pilots to fly beyond 60 years of age; it merely permits States to allow this practice.

The FAA is required to ensure that no degradation of safety occurs with any alteration to its regulations. The Do Not Adopt the ICAO Standard Working group believes that because of the FAA’s stated desire to make the safety management system process the cornerstone of all safety endeavors, a safety risk assessment should be conducted by the agency before making any change to the current rule.

Following is a selection of text from the ICAO Safety Management Manual, Doc 9859 AN/460, first edition 2006, which helps explain the importance of the Safety Management System:

“Safety is the state in which the risk of harm to persons or of property damage is reduced to, and maintained at or below, an acceptable level through a continuing process of hazard identification and risk management.”

“2.1.1 The responsibility for safety and effective safety management is shared among a wide spectrum of organizations and institutions, including international organizations, State regulatory authorities for civil aviation, owners and operators . . . industry and professional associations Generally, these responsibilities fall into the following areas:

- a) defining policies and standards affecting safety
- b) allocating resources to sustain risk management activities
- c) identifying and evaluating safety hazards
- d) taking action to eliminate hazards or reduce the associated level of risk to what has been decided as being an acceptable level of risk.”

FAA Administrator Blakey made the following remarks in early November 2006 before the International Safety Forum in Washington, D.C.: “It comes down to managing risk. You have to know the hazards — the consequences of what can hurt us. Then you must assess the likelihood that it will happen — the risk. And then, of course, the severity. The purpose of a safety management system is to provide a systematic way to eliminate, mitigate, or manage risk and to provide assurance that those actions are effective.”

Safety risk analysis is aimed at eliminating hazards or reducing them to acceptable levels. The safety risk analysis is a “closed loop, real world” process rather than an “ivory tower” process, which relies on the experience and judgment of subject matter experts. Five fundamental steps in the safety risk analysis process are to (1) plan and organize the safety risk analysis team; (2) perform hazard identification and analysis; (3) conduct the risk assessment; (4) document team decisions in a report; and (5) validate and monitor the actions taken as a result of the risk assessment.

The Do Not Adopt the ICAO Standard Working Group’s view is that the FAA has determined and long held that the establishment of a maximum pilot flying age is a necessary safety measure. If that safety measure were to be altered, it is essential that an equivalent level of safety be maintained. A safety risk analysis should be performed with the assistance of the airline, pilot, and aeromedical communities to aid the FAA in determining how to implement such a change if the agency decides to adopt the ICAO standard. If, as the Adopt ICAO Standard Working Group alleges, there is no safety component to the Age 60 Rule, the safety risk analysis process will produce strong evidence to support that position.

Each State within ICAO is sovereign and has the ability to enact its own regulations that are applicable to its unique operations and operating environment. The United States has filed a number of differences with ICAO because ICAO standards are not appropriate or are in conflict with 14 CFR. That is the prerogative of the United States and a duty and responsibility of the FAA, which is charged with maintaining the highest possible safety standards. When ICAO standards do not meet FAA safety requirements — which this new standard does not — or do not demonstrate at least an equivalent level of safety, they must be rejected. In the interests of safety, the U.S. traveling public expects and demands such performance on the part of the FAA. Likewise, it would be inappropriate to make a change to this important rule based solely on political, economic, or legal factors. The United States has one of the best safety records; one that is admired throughout the world. It must maintain the highest standards of safety that the world has come to expect.

Conclusions

The FAA should not adopt the new ICAO standard’s maximum pilot age of 65 years of age because—

- ICAO did not conduct a safety risk analysis to evaluate the impact of the change in the standard on safety. Before initiating a rulemaking that could change the Age 60 Rule, the FAA should conduct a safety risk assessment with the participation of airline, pilot, and aeromedical representatives.

- The new age 65 standard arbitrarily replaces one age limit with another.
- There is no criterion-based process for determining pilot fitness to fly past 60 years of age.
- No mitigations have been offered that would provide for an equivalent level of safety if the ICAO standard were adopted over the existing Age 60 Rule.
- Adoption by the FAA of the new ICAO standard would reduce the current U.S. airline safety standard.
- The FAA will be in compliance with the new ICAO standard on November 23, 2006, without changing the existing regulations because the standard does not preclude the United States (or any ICAO State) from setting a lower maximum age limit.

The Do Not Adopt the ICAO Standard Working Group position is endorsed by the following ARC members:

- Jim Kaiser, American Airlines, Inc.
- Keith Champion, Allied Pilots Association (American)
- John Lux, ALPA (Federal Express)
- Terry McVenes, ALPA International
- Bill Dressler, ALPA (Express Jet)
- Konstantinos “Dino” Atsalis, ALPA (Delta)

PUBLIC COMMENTS TO DOCKET NO. FAA–2006–26139

In an attempt to ensure the ARC adequately addressed the issues, it requested the FAA publish a notice and accept public comments on whether the FAA should adopt the ICAO standard and, if so, what issues it would have to address. The notice requesting comments was published in the Federal Register on October 25, 2006 (71 FR 62399), and comments were accepted until November 15, 2006; however, the ARC continued to review comments after the close of the comment period. The ARC notes that anyone can provide a comment to the docket and that during its review of the comments it did not independently verify the comments it received; each comment was taken at its face value. However, the ARC ignored duplicate comments provided by the same individual, comments submitted to the wrong docket, and comments with no data.

As of November 28, 2006, the ARC received a total of 5,719 submissions to the docket. Of those submissions, 126 are duplicates of other submissions,³ 16 were submitted to the wrong docket, and 2 contained no data. Therefore, 5,575 unique commenters provided

³ There are numerous comments to the docket submitted by the same commenter. Some of these comments address unique issues and therefore are not considered duplicates. Accordingly, it could not be assumed that each comment submitted by the same commenter is a duplicate of another submission by that commenter. Because of the large number of commenters and the short timeframe, a thorough comparison of all commenter submissions was not possible. It is possible that there are more duplicate comments.

17,906 comments on whether the FAA should adopt the ICAO standard.⁴ The following table provides the number of unique commenters by type of commenter.

Type of Commenter ⁵	Number of Unique Commenters
Individual (not necessarily pilot)	3,821
Pilot	1,589
Pilot (Retired)	136
Pilot Union or Pilot Association	11
Air Carrier	9
Other	6
Air Carrier Association	3
Total number of unique commenters	5,575

The following table provides the number of commenters and whether they support or oppose the adoption of the ICAO standard or offered a comment with no opinion.

Commenter's General Position	Number of Unique Commenters
Supports Adoption of the ICAO standard	4,037
Opposes Adoption of the ICAO standard	1,506
Provided comment with no opinion	32

The following table provides a breakdown of the number of comments received by issue in descending order from most to least number of comments.

Issue	Number of Comments
Supports Adoption of ICAO Standard - General	4,046
Opposes Adoption of ICAO Standard - General	1,527
Supports Adoption - Current rule treats foreign and U.S. pilots disparately	1,322

⁴ Each issue that an individual commenter addresses is captured as a comment. Accordingly, a single commenter could have numerous comments.

⁵ A commenter was only categorized as a pilot if he or she so indicated.

Issue	Number of Comments
Supports Adoption - Current rule constitutes age discrimination	1,093
Supports Adoption - Pilots with more experience offer a safety benefit	868
Opposes Adoption - Safety would be negatively impacted	834
Supports Adoption - Examinations and proficiency checks offer adequate safeguards against degradation of abilities	669
Supports Adoption - Current rule is unfair	614
Supports Adoption - Medical/scientific data does not justify restriction based on age alone	570
Opposes Adoption - Degradation of cognitive skills/performance	553
Supports Adoption - Current rule is outdated/archaic	553
Supports Adoption - Life expectancy and health generally, and for pilots specifically, has increased since adoption of the existing standards	551
Supports Adoption - Pilot compensation and retirement benefits have been devalued	442
Supports Adoption - Current rule is arbitrary	401
Supports Adoption - Current rule offers no safety benefit/is not safety-based	386
Supports Adoption - Initial promulgation was and opposition to change is political/economic, not safety-based	373
Supports Adoption - Age 65 standard will align with retirement/pension benefits ages	354
Opposes Adoption - Safety concerns should take precedence over economic issues	338
Supports Adoption - Adoption of ICAO standard would save the Government money or bring in revenues	286
Supports Adoption - Allowing foreign pilots over 60 conflicts with the position that the Age 60 Rule is safety-based	236
Supports Adoption - Operations involving pilots over age 60 in other ICAO States or non-airline operations demonstrate safety	192
Opposes Adoption - Older pilots are more subject to the effects of fatigue on long/overnight trips	181
Opposes Adoption - Increasing the retirement age will economically harm junior	154

Issue	Number of Comments
pilots	
Opposes Adoption - Requirement that second pilot be under age 60 demonstrates lack of safety	136
Opposes Adoption - Lack of significant statistical data demonstrating safety	134
Opposes Adoption - Lack of study into effects of adoption	120
Opposes Adoption - No criterion-based process for determining fitness exists	113
Medical standards should be raised if ICAO standard adopted	101
Supports removal of age limit altogether	98
Opposes Adoption - Replaces one arbitrary limit with another	93
Opposes Adoption - The United States is not facing a pilot shortage	83
Opposes Adoption - Increased employment expenses (salary, sick leave, disability)	77
Supports Adoption - No air carrier accident has been attributed to pilot age	67
Supports Adoption - Technological improvements have increased safety and lowered human resource demands	51
Supports Adoption - Provides additional earning capability	39
Other Comment With No Opinion	33
Supports Adoption - In-flight incapacitation does not represent a significant safety risk	31
Opposes Adoption - Lack of medical opinion supporting adoption	27
Opposes Adoption - Will require modification of crew scheduling software/procedures	24
Opposes Adoption - Reopening of contracts	23
Opposes Adoption - Reemployment issues	21
Supports Adoption - Improved training methods have increased safety and lowered human resource demands	17
Opposes Adoption - Impacts seniority of first officers over age 60	15
Adequate time to implement must be provided if ICAO standard adopted	12

Issue	Number of Comments
Frequency of medical examination should be increased if ICAO standard adopted	12
Opposes requiring second crewmember below age 60	12
Opposes Adoption - Impacts other regulations	9
Supports Adoption - The United States is facing a pilot shortage	5

The ARC reviewed the summary of comments and used the input during its deliberations. See Appendix 9 for a summary of the comments broken down by commenter affiliation and issue commented on. Appendix 9 also includes a table of the U.S. Senators and business and associations that commented on the issue and a copy of their comments provided to the docket.

STATEMENT OF THE AEROSPACE MEDICAL ASSOCIATION

The Aerospace Medical Association (AsMA) is the largest, most representative professional organization in the fields of aviation, space, and environmental medicine, with more than 3,200 members from over 70 countries. The ARC received the following information from the AsMA.

The AsMA recognizes there are many factors to be considered in determining any age restriction for air transport pilots (ATP) but firmly believes the policy should be based on operational rather than medical considerations because aging is not an illness. Although there are normal physiological changes that come with aging, those changes do not necessarily degrade a pilot's ability to function in the cockpit.

A number of studies regarding aging pilots have been done over the past 25 years. However, because there have been no ATPs over 60 years of age, it would be extremely tenuous to extrapolate these findings from younger pilots to older pilots. (The data was taken from ATPs below 60 years of age and from pilots over 60 years of age who fly general aviation or commuter/air taxi operations.)

A number of nations do allow ATPs over 60 years of age to continue flying as ATPs (see Appendix 6 to this report), but there is no comprehensive data on how they have fared. There is one study by Japan Air Lines (JAL) published several years ago in which it was reported that there were no accidents or incidents due to illness or aging among this cohort of pilots more than 60 years of age. Based on informal discussions with medical directors from overseas airlines, AsMA believes other airlines have had the same experience as has been reported by JAL.

One could argue that older pilots are at greater risk because of an increased incidence of heart disease or stroke. However, for younger pilots there are increased risks for

incapacitating illnesses such as bleeding peptic ulcer disease or migraine headaches. Thus, to assume all the risks reside in older pilots would be misleading.

Previous studies have demonstrated statistically that ATPs (and military pilots) fare much better than the general population in practically all disease categories.

There has never been a U.S. air carrier ATP accident assigned to medical causes. Certainly incidents have occurred in-flight that did threaten flying safety, but these are very rare events, and when they do occur, the illness is almost always not incapacitating.

Given this information and the fact that there are two pilots in the cockpit, it would seem reasonable to assume the risk of a significant medical event during a critical phase of flight would imperceptibly threaten flying safety. The risk is vanishingly small.

AsMA believes that age should not be the sole criterion for disqualifying an ATP from cockpit duty.

In addition, the current FAA medical standards and its current policy of a medical examination for ATPs every 6 months is reasonable and should be continued if the FAA adopts the ICAO standard. Although some would argue that more tests should be added for these older pilots, Dr. Russell Rayman, Executive Director of AsMA, does not believe this would in any way enhance flying safety. Most, if not all, screening tests would not reveal information indicating imminent, sudden incapacitation. Therefore, adding more tests would not provide useful information and could in fact be harmful to the pilot because of the problem of false-positive results.

IMPLEMENTATION ISSUES OF ADOPTING THE ICAO STANDARD

If the FAA were to adopt the ICAO standard, there would be numerous implications for the FAA and industry. While industry understands the FAA does not get involved in its internal operations and contract negotiations, these are issues that would impact implementing the new ICAO age standard in the United States and should be considered by the FAA in determining whether to adopt the standard.

The ARC notes that some air carriers do not have concerns over implementation issues, while others have significant concerns.

FAA ACTIONS

The FAA would have to initiate a rulemaking activity to change the current regulations if it decides to adopt the ICAO standard. The FAA also would have to review the impact of the new regulation on other regulations.

IMPLEMENTATION TIMING

The FAA should consider providing all operators a range of sufficient time to develop policies and procedures, revise crew scheduling software, and negotiate changes to collective bargaining agreements to ensure compliance with the new standard. Some operators will be able to implement a new rule immediately while others with more complex operations will require additional time. Therefore, the rule should enable those air carriers that are able to implement the change quickly the ability to do so but also ensure that air carriers with more complex issues are given adequate time to implement the changes.

Safety

All ARC members recognize that the FAA's primary mission is safety and that the industry remains committed to maintaining the highest level of safety. Members of the ARC have widely varying views on the safety impact of the change. Some ARC members have maintained that safety may be compromised by having older pilots in the cockpit, while others maintain that by keeping the most experienced pilots in the cockpit, safety is enhanced. The detailed views of safety implications are contained in the respective position papers. (See Appendixes 2 and 3 to this report.)

Medical

During ARC meetings, the Executive Director of AsMA, Dr. Russell Rayman, stated that he believes that existing medical standards and the FAA's current policy of medical examination for ATPs every 6 months is reasonable and should be continued.

Section 121.437(b) allows pilots other than the pilot-in-command to fly with a commercial pilot certificate. First officers are authorized to fly domestically with a second-class airman medical certificate and an annual exam. The ICAO change that took effect on November 23, 2006, requires pilots over age 60 flying internationally to have an ICAO class I medical assessment or the equivalent every 6 months. Therefore, pilots over age 60 flying internationally with an FAA second-class airman medical certificate will need to have their examination renewed every 6 months to be in compliance with the ICAO requirement, but they may still fly domestically with an annual exam. It should be noted that the FAA second-class airman medical certificate is not considered equivalent to an ICAO class I medical assessment in some countries because the FAA second-class airman medical certificate examination does not include an electrocardiogram. Airlines that allow their first officers to fly with a commercial pilot certificate will need to check with the countries into which they fly to determine if the first officer's FAA second-class airman medical certificate is acceptable. The FAA does not intend to change the periodicity requirements for its second-class airman medical certificate examination.

ECONOMIC AND OPERATIONAL

The FAA should consider the impact on an air carrier's operations, its pilot employee group, and the industry as a whole. While contractual items are of concern to some airlines and pilot groups, it is important to understand that not all airlines/pilot groups are equally affected. Accordingly, many contractual/operational issues should be addressed under the provisions of the Railway Labor Act as is the case for all such contractual issues. No airlines or pilot groups should be limited by other airline or pilot groups on issues specifically related to contractual terms.

For some airlines, the following have been identified as potential contractual issues:

- Benefits
- Disability
- Insurance
- Pay
- Retirement
- Scheduling
- Seniority
- Staffing

Economic

Identifying the following economic impacts does not replace the rigorous economic impact analysis the FAA has to complete during the rulemaking process. Each airline will have to identify its costs.

Impact on Retirement Plans

There are two categories of retirement plans: defined benefit plans and defined contribution plans. In defined benefit plans, the plan document defines the amount of benefit a pilot will receive at retirement. This amount is usually defined as an annuity payable for life beginning at normal retirement age, and pilots usually can select from various payment plans. Defined contribution plans define the amount an employer will contribute to the plan, which is often a percentage of the pilot's pay, and individual accounts are maintained for each pilot. The amount payable at retirement is dependant on the account balance and usually is payable in a lump sum.

A pilot's normal retirement age is not linked to the Age 60 Rule but is defined under a pilot group's collective bargaining agreement. If the FAA were to adopt the new ICAO standard, the normal retirement age at these airlines would not automatically change but would have to be renegotiated with each pilot group.

The full cost impact has not been determined. The change would affect the airline as well as the pilot group. The impact would vary depending on the structure of the retirement and benefit plans. The parties to the collective bargaining agreement would have to determine their impact.

An individual pilot could benefit greatly under a defined contribution plan. Those individuals holding defined contribution plans would benefit substantially by having more working years in their careers through contributions and compounding of assets. (See Appendixes 10 and 11 to this report for more information on defined benefit plans and defined contribution plans provided by the Do Not Adopt ICAO Standard Working Group and the Adopt ICAO Standard Working Group, respectively.)

Salary and Benefit Costs

If the new ICAO standard were adopted, some air carriers could be faced with pilots having higher aggregate seniority and therefore higher average wage rates. This would increase the direct operating costs of the air carrier as well as its pension plan expenses. Older airlines with high-longevity employees would be at a competitive disadvantage to younger airlines with newly-hired employees.

The new standard also could require air carriers to have higher reserve pilot manning requirements to resolve 60/65 split conflicts that could occur and cover the increased number of sick days used as a pilot ages, which could result in higher costs to the air carrier.

There could be increased costs from extending disability benefits beyond 60 years of age, depending on the circumstances between airlines and pilot groups.

It has been industry experience with pilots who are over 60 years of age who continue as flight engineers that their use of sick leave increases dramatically. The ARC acknowledges there could be reasons other than medical that could drive that increased usage.

Training Costs

Implementing the new ICAO standard would have a mixed impact on an air carrier's training program. In some situations, adopting the ICAO standard could stimulate seat movement of some pilots that would increase training costs. Alternatively, there could be a reduction in training costs because of reduced pilot movement, including movement from one fleet type to the next or from first officer to captain.

The new ICAO standard also could impact initial operating experience flights and line checks because a check airman over 60 years of age may not be able to give an initial operating experience flight or line check to a pilot over 60 years of age. This could limit the flexibility of training assignments for some airlines.

Additional Income Earning Opportunity for Pilots

The change would provide an additional 5 years of earning potential for pilots.

Operational

Planning, Scheduling, and Bidding Software

All air carriers would have to modify their planning, scheduling, and bidding software. The new ICAO standard would impact an air carrier's scheduling process because pilots over 60 years of age cannot be assigned or scheduled together. The difficulty of modifying the software varies significantly between air carriers. Some air carriers may have to invest in new, potentially costly software.

Pilot Staffing

At some airlines, the new ICAO standard could limit an air carrier's ability to reassign a pilot over 60 years of age, depending on the airline's pilot demographics. It also could require an air carrier to have more reserve pilots, which would increase its costs.

For some air carriers, under the new ICAO standard, once a pilot reaches 60 years of age it is possible that retirements could become unpredictable. An air carrier might expect more short notice retirements once a pilot reaches 62 years of age because he or she will be able to receive Social Security Administration benefits.

If the FAA, through its analysis, determines that 65 years of age is safe, some of the ARC members believe the FAA should consider the option of two pilots over the age of 60 being allowed to operate on domestic routes, but not international routes. This could mitigate the over-under issues domestically where ICAO does not apply. However, other members of the ARC do not support this alternative solution as it could further add to the implementation concerns the group has already expressed.

Air Carriers With Second Officers

Some air carriers currently employ pilots over 60 years of age as second officers. If the FAA were to adopt the ICAO standard, these air carriers would be faced with the following options:

- *Retrain all second officers over 60 years of age.* Retraining and allowing these previously affected age 60 second officers to return/reclaim captain and/or first officer positions could disrupt operations and substantively increase training obligations at these air carriers. Each training cycle is expected to take an average of 75 days, would tie up that carrier's training facilities, and reduce or delay training for other pilots. Allowing over age 60 second officers to subsequently train for captain or first officer could also produce over manning in certain crew positions and under manning in others. This option can be complex, expensive, and operationally disruptive.
- *Pay the over age 60 second officers pass-over pay.* This option would be operationally viable but expensive for affected air carriers. Paying second officers as captains or first officers would create a compensation windfall for the second officers as air carriers choose to avoid the additional costs and implications of retraining them by just paying them at the higher compensation pay rate.

Any change to the Age 60 Rule should apply to captains/first officers continuing as captains/first officers. Second officers who were transitioned to second officers as a result of the previous application of the Age 60 Rule may be retrained and phased into their former positions if agreed to per collective bargaining agreements or seniority. Prospective application of the rule as it pertains to second officers transitioned to second officers because of a previous application of the Age 60 Rule is another alternative that could mitigate costs and risks.

Augmented Flight Deck Crews

The FAA and industry need a clear interpretation of the ICAO standard as it applies to augmented flight deck crews. Is the standard intended to say that only one member of the flightcrew can be over 60 years of age regardless of the phase of flight? If so, this will be a significant issue on augmented flights greater than 8 hours flight time. If the standard intends that only one pilot on an augmented crew can be over 60 years of age, this will further impact flightcrew manning on augmented flights with four or more pilots; this would result in even higher manning levels and increased costs to the air carriers. Even if the standard allows two pilots over 60 years of age on an augmented crew, as pilots over 60 years of age move into the captain and first officer positions on augmented crews, the 60/65 split could result in a reduction of landing experience for first officers over 60 years of age paired with captains over 60 years of age.

REINSTATEMENT

Members of the ARC agree that for reinstatement, the rule should be prospective. If this is outside the scope of the Administrator authority, Federal legislation may be required to protect companies and unions from lawsuits that may arise challenging the prospective nature of the change, such as reinstatement of employment, seniority, and/or crew position.

If reinstatement rights for pilots already retired were included, it would have a tremendous impact on air carriers. Any element of retroactivity would add more complexity to the issue and make it almost impossible for any agreement on implementation issues.

AGE DISCRIMINATION

The ARC members had divergent views on the issue of age discrimination. Some ARC members believe—

- The establishment of any age (even age 65) that forces an employee to terminate employment runs contrary to the fundamental protections offered by the Age Discrimination in Employment Act of 1967 (ADEA)⁶. To date, the courts have deferred to the FAA's Age 60 Rule as part of the FAA's rulemaking and enforcement authority in the area of commercial aviation;
- Depending on the reasons articulated by the FAA if they changed the Age 60 Rule to age 65, there may be problems/issues created under ADEA that have not been previously realized; and
- Notwithstanding the above, there are current age discrimination issues for air carriers that employ pilots over 60 years of age as second officers. These issues and concerns are addressed more fully in the implementation section of this report.

Other ARC members believe—

- Use of a maximum age, just like a minimum age, is a safe and proven methodology for ensuring that only healthy and competent individuals are permitted to pilot aircraft;
- The courts have consistently abstained from taking any action that would undermine the FAA's Age 60 Rule. Nevertheless, changing the age limit to a

⁶ The EEOC states in its comment to the docket (provided in Appendix 4 to the Report) that the Age 60 Rule runs counter to the narrow scope of the BFOQ defense and the fact-specific, case-by-case analysis it requires. The EEOC "supports raising the age limit for part 121 pilots to age 65 for a specific time period as a reasonable interim step in the process of eventually eliminating age as a determinative factor in the employment of airline commercial pilots."

year greater than 60 will likely do little, if anything, to abate the ongoing court challenges to the FAA's maximum pilot age rule; and

- Elimination of any maximum pilot age, which is the expressed goal of the age discrimination opponents, will almost assuredly result in more stringent health and cognitive abilities testing, which will adversely impact pilots of all ages, not just those approaching retirement age.

CONCLUSION

The Age 60 Rule clearly remains a contentious issue for the commercial aviation industry. It has broad reaching implications for individual pilots and the companies that employ them.

RECOMMENDATION

While ARC members collaborated to identify many issues associated with adoption of the new ICAO standard, polarized views limited the ARC's ability to reach consensus on recommendations.

The ARC agreed to the following recommendation for consideration:

Reinstatement: Any change to the Age 60 Rule should be prospective. If preventing reinstatement is outside the scope of the Administrator's authority, Federal legislation may be required to protect companies and unions from lawsuits that may arise challenging the prospective nature of the change, such as reinstatement of employment, seniority, and/or crew position.